affirm. 19

Strong —

No assignment of Error but the general plea

damages

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 276.

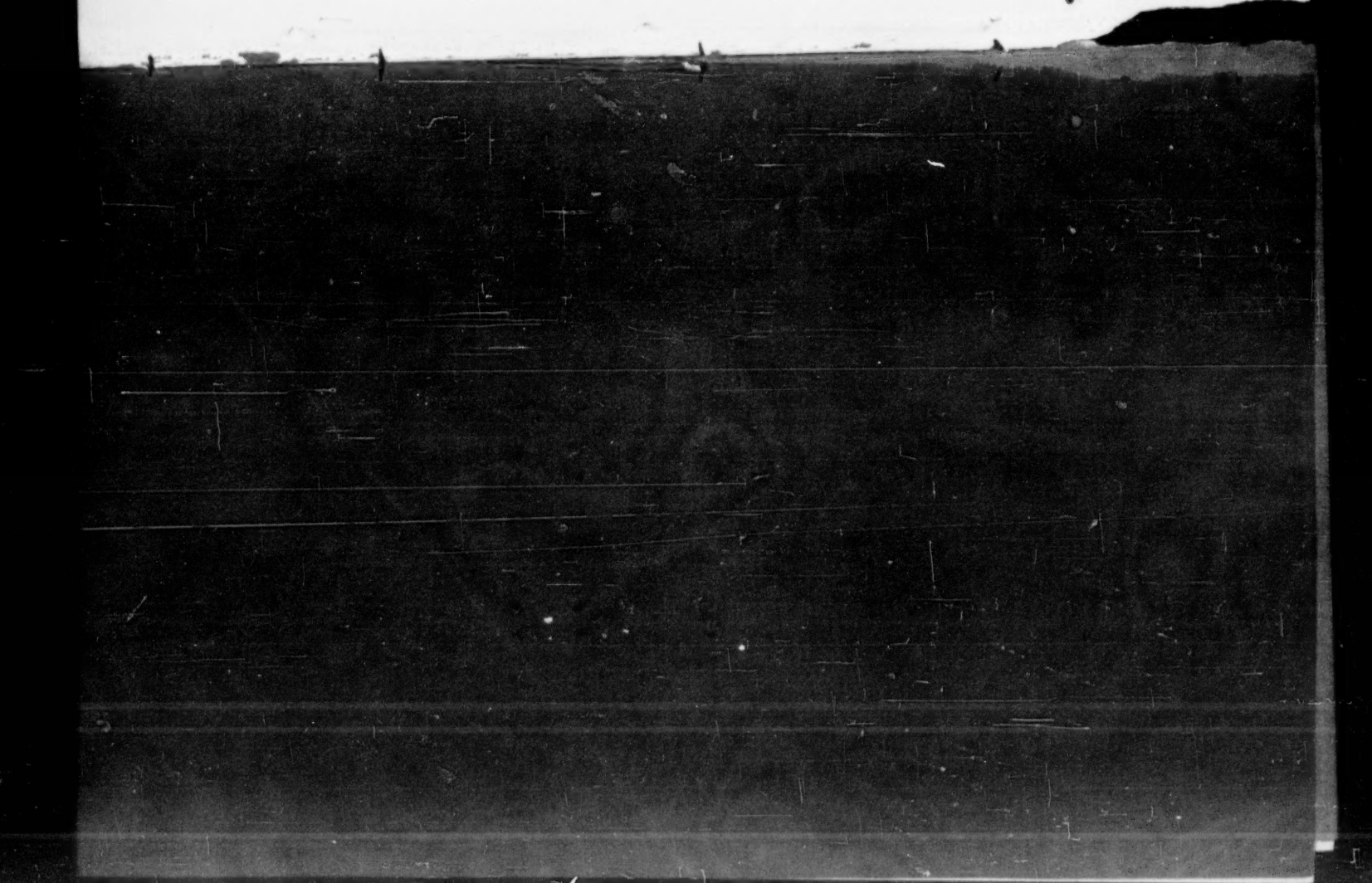
PATRICK H. HENNESSY, PLAINTIFF IN ERROR,

vs.

HENRY K. SHELDON, J. E. SHELDON, WILLIAM J. HOYT, SAMUEL A. BUSICK, AND EDWARD LYNES, TRADING AS SHELDON, HOYT AND COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED NOVEMBER 1, 1870.



19.

SUPREME COURT OF THE UNITED STATES.

No. 276.

PATRICK H. HENNESSY, PLAINTIFF IN ERROR,

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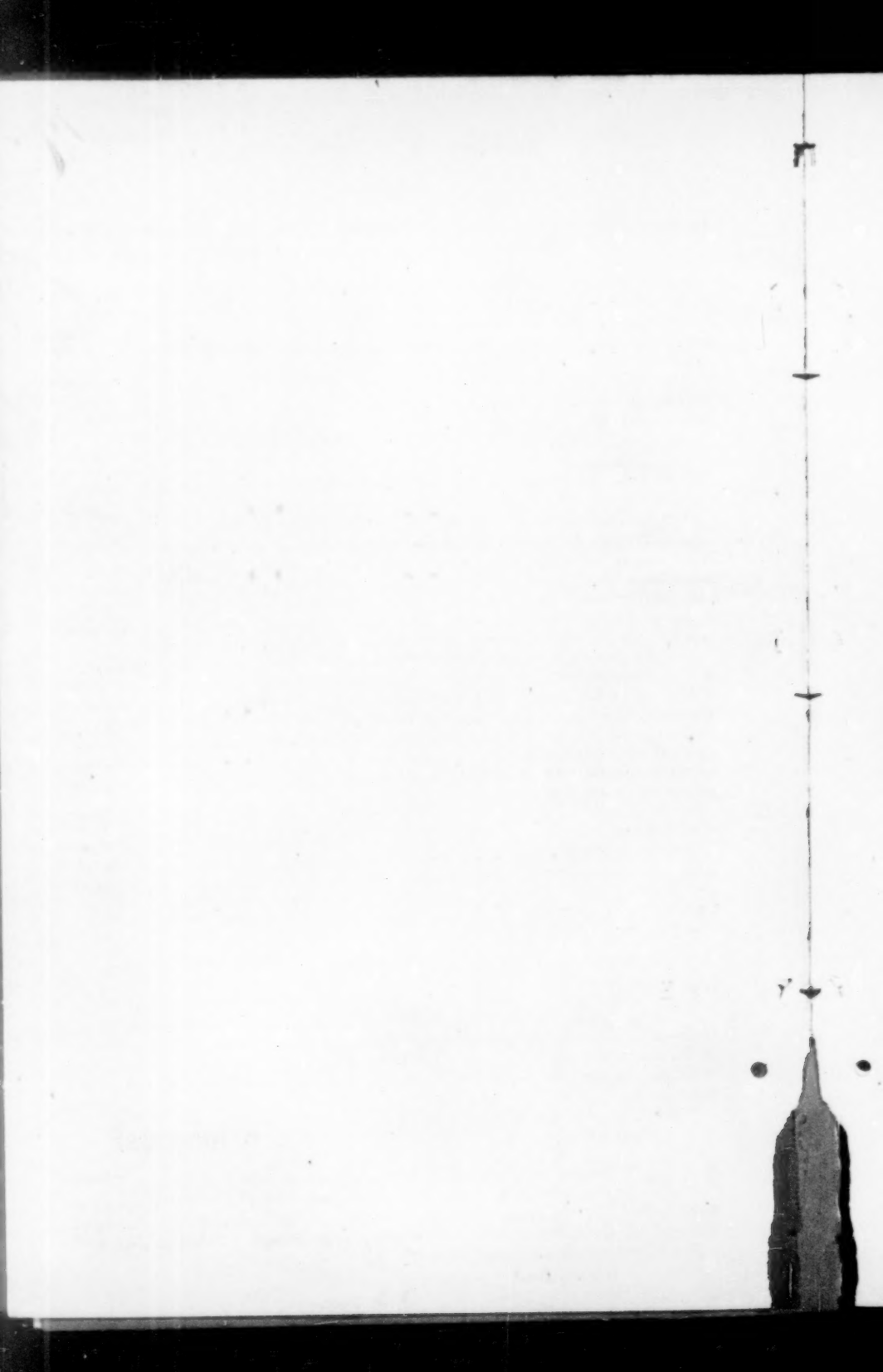

1 *Petition.*

In the circuit court of the United States, fifth circuit, and eastern district of Texas, holding sessions at Galveston.

Be it remembered that, in the case of Sheldon, Hoyt & Co., against P. H. Hennessy, begun in said court upon a petition filed by said Sheldon, Hoyt & Co., plaintiffs, on the 17th day of November, A. D. 1868, and numbered upon the docket of said court No. 313, the following proceedings were had, that is to say:

SHELDON, HOYT & Co.
vs.
P. H. HENNESSY.

To the hon. the judges of the United States circuit court, for the eastern district of Texas, at Galveston:

The petition of Henry K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Samuel A. Busick, & Edward Lynes, who are citizens of the city of New York, and State of New York, and reside in said city and State, and who are merchants and copartners, trading and doing business in said city and State, under the firm name of Sheldon, Hoyt & Co., plaintiffs, against Patrick H. Hennessy, a citizen of the city and county of Galveston, and State of Texas, and resides in said county and State, within said eastern district of Texas, and who was on the 7th day of
2 August, 1867, a merchant, trading and doing business in said city of Galveston, under the name and style of P. H. Hennessy, defendant, sheweth: That heretofore, to wit, on the 7th day of August, 1867, the defendant being indebted to plaintiffs, made, executed, and delivered to plaintiffs under their firm name, his, the defendant's, two certain promissory notes, in writing, of which notes the following are substantial copies:

"$2,056 04. NEW YORK, *August 7th*, 1867.

"Nine months after date, for value received, the subscriber, of Galveston, county of Galveston, State of Texas, promise to pay to the order of Sheldon, Hoyt & Co., two thousand & fifty-six $\frac{04}{100}$ dollars, with exchange on New York, at office of Ball, Hutchings & Co., Galveston.

"Due May 7–10, '68.

(Signed) "P. H. HENNESSY."

"$2,056 04. NEW YORK, *August 7th*, 1867.

"Twelve months after date, for value received, the subscriber, of Galveston, county of Galveston, State of Texas, promise to pay to the order of Sheldon, Hoyt & Co., two thousand & fifty-six $\frac{04}{100}$ dollars, with exchange on New York, at office Ball, Hutchings & Co., Galveston.

"Due Aug't 7–10, '68.

(Signed) "P. H. HENNESSY."

3 Wherein and whereby defendant promised and became liable to pay to plaintiffs said sums of money, and plaintiffs allege that said notes are due and unpaid; that they have demanded payment thereof of defendant, but defendant neglects and refuses to pay said sums of money or any part thereof.

Wherefore plaintiffs' bring suit and pray for process to issue, citing defendant according to law, and for judgment against defendant for said sums of money, and for interest, and for exchange, which plaintiffs allege was one per cent. premium at the maturity of said notes, and for costs in this suit, and for general relief.

Per PHILIP C. TUCKER,
Att'y for Plaintiffs.

Citation.—Issued Nov'r 20th, 1868.

United States circuit court.

The President of the United States of America to the marshal of the eastern district of Texas, greeting:

You are hereby commanded to summon Patrick H. Hennessy, if to be found in your district, to be and appear before the honorable circuit court of the United States, at the next term thereof, to be holden
4 for the fifth judicial circuit, at the court-rooms thereof, in the city of Galveston, on Monday, the seventh day of December next, to answer the petition of Henry K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Samuel A. Busick, & Edward Lynes, against him in an action of debt, of which you will serve the said defendant with the accompanying copy of said petition.

Herein fail not, and due return of this writ make.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court thereof, at Galveston, this 20th day of Nov'r, in the year of our Lord eighteen hundred and sixty-eight, and of American independence the ninety-third year.

[SEAL.] LEVI JONES,
Clerk, Eastern District of Texas, at Galveston.

Marshal's return.

Rec'd Nov'r 20th, 1868, and on the same day I delivered to Patrick H. Hennessy a true copy of this writ, and a copy of the petition certified by the clerk of this court.

J. J. BYRNE, *U. S. M.*,
By W'M A. SHEIVE, *Dep't.*

5 *Answer.—Filed Dec'r 11th*, 1868.

In the circuit court of the United States, for the eastern district of Texas, sitting at Galveston.

PATRICK H. HENNESSEY *ad's'm* HENRY K. SHELDON, J. E. SHELDON, W'M J. Hoyt, Samuel A. Busick & Edw'd Lynes.	No. 213.

And now at this day comes the defendant, Patrick H. Hennessey, by Thompson & Goldthwaite, his attorneys, and pleads, answers, and defends, and says that he denies all and singular the allegations in the petition of said plaintiffs contained, and alleges that the same in manner and form as therein set forth are untrue; and this defendant prays may be enquired of by the country, &c.

And for further answer the said defendant again comes and pleads, answers, and defends, and says that after the accruing of the said debts and causes of action in the petition mentioned, and before the commencement of this suit, to wit, on the tenth day of August, A. D. one thousand eight hundred and sixty-eight, he paid to the plaintiffs divers sums of money amounting, to wit, to all the moneys in the petition mentioned, in full satisfaction and discharge of all the causes and
6 rights of action in said petition mentioned, which payment the said plaintiffs did then accept of and from the defendant in such full satisfaction and discharge as aforesaid; and this the defendant is ready to verify. Wherefore he prays judgment, &c.

THOMPSON & GOLDTHWAITE,
For Defendant.

Judgment by default.—From the minutes, Dec'r term, Dec'r 15th, 1868.

SHELDON, HOYT & Co.
v.
P. H. HENNESSEY. } 313.

This day came the plaintiff by his attorney, and the defendant, having been duly served with process, came not but made default:

It is therefore considered by the court, that the plaintiffs have and recover of the defendant herein the damages by them sustained by reason of the non-payment of the demand sued on.

And because the damages are unknown, it is ordered that a jury be impanelled at some future day of the term to inquire thereof.

Order setting aside judg't by default.—From the minutes, Dec'r term, Dec'r 16th, 1868.

SHELDON, HOYT & Co.
v.
P. H. HENNESSEY. } 313.

7 On motion of L. A. Thompson, of counsel for defendant, and for good cause shown, it is ordered that the default entered in this cause on yesterday be set aside.

Affidavit of def't for cont'u'ce.—Filed January 15th, 1869.

In the circuit court of the United States, for the fifth circuit, and eastern district of Texas, sitting at Galveston.

SHELDON, HOYT & Co.
v.
PATRICK H. HENNESSEY. } No. 313.

And now comes Patrick H. Hennessey, defendant in the above-entitled cause, and makes oath and saith, that he cannot proceed safely to trial at the present term of the court for want of testimony material to the case; that Marcus F. Hodges, of the city and State of New York, is a material and competent witness for him in said cause; that the summons and copy of the petition of the plaintiffs in this action were served on him but a short time before the day of meeting of this court, to wit, on the 20th day of November last past; that after service of

said process, and the time occupied with consultations with his counsel as to the defence of deponent, there was not time to file interroga-
8 tories, and give notice thereof to plaintiffs' counsel, and sue out a commission to obtain the testimony of said witness in time for the meeting of this court; that the said witness resides in the city of New York, in the State of New York; that he cannot obtain the testimony from any other source; and that he expects to be able to obtain the same by the next term of the court. Deponent further says that he did not expect that the cause would be delayed until the present late day in the term, and presumes it would not have been, but for the illness of his counsel in the early part of the term, a contingency which he could not calculate upon.

P. H. HENNESSY.

Sworn to & subscribed before me this 15th day of Jan'y, A. D. 1869.
LEVI JONES, *Clerk.*

Order.—From the minutes, Dec'r T., 1868, *January 15th*, 1869.

SHELDON, HOYT & Co. }
v. } 313.
P. H. HENNESSEY. }

Continued as on defendant's affidavit.

Order.—From the minutes May term, 1869, *July 7th*, 1869.

SHELDON, HOYT & Co. }
v. } 313.
P. H. HENNESSEY. }

Continued—

9 *Judgment.—From the minutes, May term, May 19th*, 1870.

SHELDON, HOYT & Co. }
v. } 313.
P. H. HENNESSY. }

This day came the plaintiffs by their attorneys, and the defendant by his attorney, and the issues being joined, thereupon came a jury of good and lawful men, to wit: Joseph Debler, H. Revuge, A. Baldinger, J. Buckley, C. Fox, M. J. Kenyon, John Daly, J. P. Davie, A. C. Crawford, A. Gehring, Philip Dargan, and A. Allen, who being duly impannelled and sworn well and truly to try the issue joined, after due deliberation for verdict, say:

"We the jury find for plaintiff in the sum of four thousand seven hundred and thirty-seven $\frac{88}{100}$ dollars, ($4,737 88.)

"HENRY REVUGE, *Foreman.*"

Wherefore it is considered by the court that the plaintiffs herein, Henry K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Samuel A. Busick, and Edward Lynes, do have and recover of and from the defendant herein, Patrick H. Hennessy, the said sum of four thousand seven hundred and thirty-seven dollars and eighty-eight cents, as by the jury aforesaid assessed, also all costs about this suit sustained, for which let execution issue.

10 *Proof.—1st original note, filed May 19th, 1870.*

$2,056 04. NEW YORK, *August 7th*, 1867.

Nine months after date, for value received, the subscriber, of Galveston, county of Galveston, State of Texas, promise to pay to the order of Sheldon, Hoyt & Co., two thousand and fifty-six $\frac{04}{100}$ dollars, with exchange on New York, at office of Ball, Hutchings & Co., Galveston.

Due May 7–10, '68.

P. H. HENNESSY.

[$1 05 internal rev. stamps.]

Proof.—2d original note, filed May 19th, 1870.

$2,056 04. NEW YORK, *August 7th*, 1867.

Twelve months after date, for value received, the subscriber, of Galveston, county of Galveston, State of Texas, promise to pay to the order of Sheldon, Hoyt & Co., two thousand and fifty-six $\frac{04}{100}$ dollars, with exchange on New York, at office Ball, Hutchings & Co., Galveston.

Due Aug't 7–10, '68.

P. H. HENNESSY.

[$1 05 internal rev. stamps.]

Writ of error.—Filed May 30th, 1870.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States, for the fifth circuit, and eastern district of Texas, greeting:

Because in the record and proceedings, as also in the rendition
11 of a judgment in a plea which is in the said circuit court before you, between H. K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Sam. A. Busick, and Edw'd Lynes, trading as Sheldon, Hoyt & Co., and Patrick H. Hennessy, a manifest error hath happened to the great damage of the said P. H. Hennessy, as by his complaint appears: and it being fit that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of Dec'r, 1870 next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 30th day of May, in
12 the year of our Lord, A. D. 1870, and of the independence of the United States the ninety-fourth, and the seal of the circuit court of the United States, for the fifth circuit, and eastern district of Texas, at Galveston, date last above written.

[SEAL.]

LEVI JONES,

Clerk U. S. Circ't Court, East. Dist. Texas, at Galveston.

Bond.—Filed May 30th, 1870.

Supreme Court of the United States.

P. H. HENNESSY
v.
HENRY K. SHELDON, J. E. SHELDON, W'M J. Hoyt, Sam. A. Busick, & Edw'd Lynes, trading as Sheldon, Hoyt & Co.

Know all men by these presents, that we, P. H. Hennessy, as principal, and John Brashear, and Michael P. Hennessy as sureties, are held and firmly bound unto the above-named H. K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Sam. A. Busick, & Edw'd Lynes, in the sum of nine thousand six hundred dollars, to be paid to the said H. K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Sam. A. Busick & Edward Lynes, their executors or administrators; to which payment well and truly
13 to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated this 24th day of May, A. D. 1870.

Whereas the above-named Patrick H. Hennessy, hath prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above-entitled suit, by the circuit court, fifth circuit, and eastern district of Texas:

Now, therefore, the condition of this obligation is such, that if the above-named Patrick H. Hennessy shall prosecute his said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

P. H. HENNESSY. [L. S.]
J. BRASHEAR. [L. S.]
MICHAEL P. HENNESSY. [L. S.]

Sealed and delivered in presence of—

UNITED STATES OF AMERICA,
Eastern Dist. of Texas:

Before me, the undersigned, this 25th day of May, A. D. 1870,
14 authority, personally came and appeared John Brashear, to me well known, who being duly sworn, on oath deposes and says that he is worth the sum of nine thousand six hundred dollars in property, subject to execution and forced sale.

CHARLES E. THOMPSON,
Comm'r Bail & Affidavits, U. S. Circuit Court, 5th Circuit, Eastern Dist. Texas.

MAY 25TH, 1870.

UNITED STATES OF AMERICA,
Eastern Dist. of Texas:

Before me, the undersigned authority, this 26th day of May, A. D. 1870, personally came and appeared Michael P. Hennessy, to me known, who being duly sworn, on oath deposes and says that he is worth the sum of nine thousand six hundred dollars in property, subject to execution and forced sale.

R. D. JOHNSON,
U. S. Com'r Circ't C't, 5th Circuit, Eastern Dis. of Texas.

Endorsed thus:

"Approved May 28th, 1870.

"JOS. P. BRADLEY,
Asso. Just. Sup. C't U. S."

15 *Citation.—Filed May 30th*, 1870.

UNITED STATES OF AMERICA, *ss:*

To Henry K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Sam. A. Busick, & Edw'd Lynes, trading as Sheldon, Hoyt & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 1st Monday in Dec'r, 1870, pursuant to a writ of error filed in the clerk's office of the circuit of the United States for the fifth circuit and eastern district of Texas, wherein P. H. Hennessy is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment, in said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. P. Bradley, associate justice of the said Supreme Court of the United States, this 28th day of May, in the year of our Lord 1870.

JOS. P. BRADLEY,
Asso. Justice Sup. C't U. S.

Marshal's return.

Received this writ on the 31st day of May, 1870, and I executed the same on the 4th day of June, 1870, by delivering to P. C. Tucker,
16 att'y for defendants in error, at Galveston, in person, a true copy of this writ.

W'M E. PARKER,
U. S. M. East Dist. Texas,
By A. GEHRING, *Deputy.*

Subscribed and sworn to before me this 10th day of Sept., 1870.

LEVI JONES,
Clerk U. S. Circ't Court, E. D. T., G.

UNITED STATES OF AMERICA,
Eastern District of Texas:

I, Levi Jones, clerk of the circuit of the United States for the eastern district of Texas, at Galveston, do hereby certify that the foregoing fifteen pages and eight lines contain a true and perfect transcript of the record and all the proceedings had in the cause number 313 on the law docket of said court, wherein Sheldon, Hoyt & Co. are plaintiffs, and P. H. Hennessy is defendant, as the same now appear of record in my office.

To certify which, witness my hand and seal of said circuit court, at Galveston, in said district, on this 20th day of September, A. D. 1870.

[SEAL.]

LEVI JONES,
Clerk U. S. Circ't Court, E. D. T., G.

17 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the fifth circuit, and eastern district of Texas, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between H. K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Sam. A. Busick & *and* Edw'd Lynes, trading as Sheldon, Hoyt & Co., and Patrick H. Hennessy, a manifest error hath happened, to the great damage of the said P. H. Hennessy, as by his complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of Dec'r, 1870, next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause

18 further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this thirtieth day of May, in the year of our Lord, A. D. 1870, and of the independence of the United States the ninety-fourth, and the seal of the circuit court of the United States for the fifth circuit, and eastern district of Texas, at Galveston, date last above written.

[SEAL.] LEVI JONES,
Clerk U. S. Circuit Court, East. Dist. Texas, at Galveston.

(Indorsed:) C. L. 313. Sheldon, Hoyt & Co., def'ts in error, a't P. H. Hennessy, plaintiff in error. Writ of error. Filed May 30th, 1870. Levi Jones, cl'k.

19 UNITED STATES OF AMERICA, *ss:*

To Henry K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Sam. A. Busick, & Edw'd Lynes, trading as Sheldon, Hoyt & Co., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the 1st Monday in Dec'r, 1870, pursuant to a writ of error filed in the clerk's office of the circuit of the United States for the fifth circuit, and eastern district of Texas, wherein P. H. Hennessy is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable J. P. Bradley, associate justice of the said Supreme Court of the United States, this 28 day of May, in the year of our Lord 1870.

JOS. P. BRADLEY,
Asso. Justice Sup. C't U. S.

20 Received this writ on the 31st day of May, 1870, and I executed the same on the 4th day of June, 1870, by delivering to

P. C. Tucker, att'y for defendants in error, at Galveston, in person, a true copy of this writ.

W'M E. PARKER,
U. S. M., East. Dist. Texas,
By A. GEHRING, *Deputy.*

Subscribed and sworn to before me this 10th day of Sept., 1870.

LEVI JONES,
Clerk U. S. Dist. C't E. D. T., G.

(Indorsed:) C. L. 313. Sheldon, Hoyt & Co. v. P. H. Hennessy. Citation. Filed May 30th, 1870. Levi Jones, cl'k.

(Indorsement on cover:) No. 276. Patrick H. Hennessy, plaintiff in error, vs. Henry K. Sheldon, J. E. Sheldon, W'm J. Hoyt, Samuel A. Busick, and Edward Lynes, trading as Sheldon, Hoyt & Co. E. Texas C. C. U. S. Filed 1st November, 1870.

SUPREME COURT OF UNITED STATES.

No. 276.

PATRICK H. HENNESSY, *Plaintiff in Error,*

vs.

HENRY K. SHELDON AND OTHERS, *Defendants.*

BRIEF OF DEFENDANTS IN ERROR.

ALBERT PIKE,
ROBERT W. JOHNSON,
Of Counsel for Defendants in Error.

HENNESSY vs. SHELDON AND OTHERS.

Brief of Defendants in Error

This is error to the Circuit Court of the United States for the Eastern District of Texas.

Sheldon, Hoyt & Co., alleged to be citizens of New York, sued Hennessy, a citizen of Texas, on two notes for $2,056.04 each, made by him to them, at New York, payable, with exchange on New York, at a particular office in Galveston.

The declaration or petition claimed these sums and interest, and exchange on New York, alleged to have been one per cent. at the maturity of the notes These were made on the 7th of August, 1867, due at nine and twelve months, and suit commenced on the 20th of November, 1868.

No demurrer would have lain to the petition.

Citation was duly served by copy.

The defendant appeared and pleaded the general issue and payment. Judgment by default was taken after pleas filed, and set aside on the next day.

January 15, 1869, the case was continued on Hennessy's affidavit, for absence of witnesses and want of testimony. It was continued again July 7, 1869.

On the 19th of May, 1870, trial of the issues by a jury, who found for the plaintiff, in the sum of $4,737.88, for which and costs the Court gave judgment. Copies of the notes are in the transcript.

On this, writ of error and bond given to cause it to operate a supersedeas.

POINT. There is no bill of exceptions. No error appears by the record. The writ of error was manifestly frivolous, vexatious, and for delay.

We have vainly waited for the counsel of the plaintiff in error to assign errors, or by brief or otherwise to inform us upon what ground the writ of error was sued out and is here to vex the Court, and do now, asking affirmance and damages at the rate of ten per centum under the 23d Rule of the Court, submit the case.

ALBERT PIKE,
ROBERT W. JOHNSON,
Of Counsel for Defendants in Error.